IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1044 OF 2001

Laxman Baliram Bansode .. Petitioner

V/s

1. The Deputy Director of Vocational Education & Training Division

2. The Education Officer (Secondary) Zilla Parishad, Thane.

3. The State of Maharashtra

4. Shikshak Sanchalit Shikshan Sanstha

5. Head Master, Swami Vivekanand Vidya Mandir & Junior Arts & Commerce College .. Respondents

Mr.S.G. Kudle for the petitioner.

Mr.R.M. Patne, A.G.P. for respondents Nos.1 to 3.

Mr.S.S. Deshmukh for respondents Nos.4 and 5.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.

DATE : 9TH SEPTEMBER 2004

ORAL JUDGMENT : (Per Gokhale, J.)

1. The petitioner herein was working earlier in the school run by respondent No.4 Management as a peon. However, on his passing the S.S.C. examination, he was promoted to the post of clerk from 1st March 1986. It appears that he gave a letter subsequently saying that he finds it difficult to carry out this work and he should be placed again to the position of peon. That

letter dated 20th June 1986 was accepted by the Management, but he was given another post with a better pay, namely that of Laboratory Assistant from 7th July 1986.

2. It is seen that the petitioner protested against this posting to the Laboratory Assistant much later on 10th January 1991. It is his case that having gone into that post, he is losing his promotion to the post of senior clerk. Thereafter it has come on record that the petitioner himself gave another writing on 25th September 1996 that he should be posted as a store clerk with effect from 1st October 1996 and the Management appears to have accepted that request. That was with a view that the petitioner continues in Wada where he wanted to remain and he did not want to be transferred to some other place. The present petition is filed by making a grievance that on both the occasions, the petitioner was misled and those two writings were taken under duress. Mr.Deshmukh, learned counsel for the Management, stoutly denies this allegation and states that both these representations are written in Marathi and the petitioner understood them and has signed them. Apart from this submission of Mr.Deshmukh, this becomes a disputed question of fact as to whether any such writing was given under duress and we cannot decide this

question only on affidavits.

3. Independent of this submission of Mr.Kudle and his prayer that the petitioner should be posted as a senior clerk, he has drawn our attention to a Government Resolution dated 30th April 1998 wherein there is a provision for higher pay to those employees who have completed 12 years of service and who do not have further promotional facility. He is working now in the position of store keeper and this is an admitted position that there is no further promotional facility to the post to which he occupies from 7th July 1986, namely that of Laboratory Assistant, at a pay which was slightly higher than that of Store Keeper. It is, therefore, possible to consider the petitioner practically in the same payscale right from 1986. In the facts of the present case, therefore, it would be appropriate that the petitioner represents to the Deputy Director, Vocational Education and Training claiming higher payscale on the basis of Government Resolution dated 30th April 1998. On such a representation being made, the Management will of course have an opportunity to file its say and thereafter the Deputy Director should decide the representation considering all facts as to whether the petitioner should be given the higher payscale under the said Government Resolution. In our

view, that will meet the ends of justice. No other relief can be granted in the present petition.

4. Mr.Kudle states that the representation will be made within 4 weeks. The Management may file its say within 4 weeks thereafter. The Deputy Director will decide the representation within 12 weeks thereafter.

5. Although the letter dated 20th March 2000 issued by the Deputy Director, Technical Education had threatened recovery of the alleged excess payment made to the petitioner from 1st October 1996, Mr.Deshmukh, learned counsel for the Management, accepts that such a recovery has not been made. This being the position, we further direct that no such recovery will be made until the determination by the Deputy Director as directed above on the plea of the petitioner for fixation in higher payscale.

6. The petition stands disposed of with the above order.

7. Parties to act on an authenticated copy of this order.

(H.L. GOKHALE, J.)

(SMT. NISHITA MHATRE J.)